
HOUSE BILL No. 1082

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14-3-4.

Synopsis: Public employees' personnel records. Allows the public to have access to information in the personnel file of a public employee concerning findings of fact and decisions in which final action has been taken and that resulted in the employee being suspended without pay or discharged.

Effective: July 1, 2002.

Kersey

January 8, 2002, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

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Introduced

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1082

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-14-3-4, AS AMENDED BY P.L.201-2001,
2 SECTION 1, AND AS AMENDED BY P.L.271-2001, SECTION 1, IS
3 AMENDED AND CORRECTED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2002]: Sec. 4. (a) The following public records
5 are excepted from section 3 of this chapter and may not be disclosed by
6 a public agency, unless access to the records is specifically required by
7 a state or federal statute or is ordered by a court under the rules of
8 discovery:
9 (1) Those declared confidential by state statute.
10 (2) Those declared confidential by rule adopted by a public
11 agency under specific authority to classify public records as
12 confidential granted to the public agency by statute.
13 (3) Those required to be kept confidential by federal law.
14 (4) Records containing trade secrets.
15 (5) Confidential financial information obtained, upon request,
16 from a person. However, this does not include information that is
17 filed with or received by a public agency pursuant to state statute.

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(6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:

(A) concerning any negotiations made with respect to the research; and

(B) received from another party involved in the research.

(7) Grade transcripts and license examination scores obtained as part of a licensure process.

(8) Those declared confidential by or under rules adopted by the supreme court of Indiana.

(9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.

(10) Application information declared confidential by the twenty-first century research and technology fund board under IC 4-4-5.1.

(11) The following personal information concerning a customer of a municipally owned utility (as defined in IC 8-1-2-1):

(A) Telephone number.

(B) Social Security number.

(C) Address.

~~(11)~~ **(12)** *A photograph, a video recording, or an audio recording of an autopsy, except as provided in IC 36-2-14-10.*

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

(1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.

(2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:

(A) a public agency;

(B) the state; or

(C) an individual.

(3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of his scores.

(5) The following:

(A) Records relating to negotiations between the department of commerce, the Indiana development finance authority, the

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1 film commission, the Indiana business modernization and
 2 technology corporation, or economic development
 3 commissions with industrial, research, or commercial
 4 prospects, if the records are created while negotiations are in
 5 progress.

6 (B) Notwithstanding clause (A), the terms of the final offer of
 7 public financial resources communicated by the department of
 8 commerce, the Indiana development finance authority, the film
 9 commission, the Indiana business modernization and
 10 technology corporation, or economic development
 11 commissions to an industrial, a research, or a commercial
 12 prospect shall be available for inspection and copying under
 13 section 3 of this chapter after negotiations with that prospect
 14 have terminated.

15 (C) When disclosing a final offer under clause (B), the
 16 department of commerce shall certify that the information
 17 being disclosed accurately and completely represents the terms
 18 of the final offer.

19 (6) Records that are intra-agency or interagency advisory or
 20 deliberative material, including material developed by a private
 21 contractor under a contract with a public agency, that are
 22 expressions of opinion or are of a speculative nature, and that are
 23 communicated for the purpose of decision making.

24 (7) Diaries, journals, or other personal notes serving as the
 25 functional equivalent of a diary or journal.

26 (8) Personnel files of public employees and files of applicants for
 27 public employment, except for:

28 (A) the name, compensation, job title, business address,
 29 business telephone number, job description, education and
 30 training background, previous work experience, or dates of
 31 first and last employment of present or former officers or
 32 employees of the agency;

33 (B) information relating to the status of any formal charges
 34 against the employee; and

35 (C) information concerning ~~disciplinary actions~~ **findings of**
 36 **fact and decisions** in which final action has been taken and
 37 that resulted in the employee being ~~disciplined~~ **suspended**
 38 **without pay** or discharged.

39 However, all personnel file information shall be made available
 40 to the affected employee or his representative. This subdivision
 41 does not apply to disclosure of personnel information generally on
 42 all employees or for groups of employees without the request

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being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a recordkeeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:

(A) the donor requires nondisclosure of his identity as a condition of making the gift; or

(B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect contracts entered into by the Indiana state library pursuant to IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing advisory committee. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations

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that concern the driver.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(c) Notwithstanding section 3 of this chapter, a public agency is not required to create or provide copies of lists of names and addresses, unless the public agency is required to publish such lists and disseminate them to the public pursuant to statute. However, if a public agency has created a list of names and addresses, it must permit a person to inspect and make memoranda abstracts from the lists unless access to the lists is prohibited by law. The following lists of names and addresses may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes:

(1) A list of employees of a public agency.

(2) A list of persons attending conferences or meetings at a state institution of higher education or of persons involved in programs or activities conducted or supervised by the state institution of higher education.

(3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:

(A) prohibiting the disclosure of the list to commercial entities for commercial purposes; or

(B) specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes.

A policy adopted under subdivision (3) must be uniform and may not discriminate among similarly situated commercial entities.

(d) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(e) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(f) Notwithstanding subsection (e) and section 7 of this chapter:

(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or

(2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business.

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